

The July 21, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 7:05 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman (not present)
Craig Hiltz, Clerk (not present)
Mary Jane Coffey, Member
Susanne Murphy, Member (not present)
Timothy Foley, Associate Member

The Board was scheduled to go into Executive Session at 6:30 p.m., however Town Counsel Ilana Quirk was unable to attend the meeting therefore no Executive Session was held.

7:00 p.m. – Barberry Homes, LLC – Case #21-13 (cont'd from 06/11/14) (Zuker, Coffey, Foley)

Mr. Zuker read the public hearing notice for **BARBERRY HOMES, LLC, Case #21-13**, with respect to property located at 272 Moose Hill Road, East Walpole and shown on the Assessors Map 36 and Lot Nos. 66, 66-1, 62, Residence A Zone.

The application is for:

A Comprehensive Permit under MGL Ch. 40B to allow construction of 174 unit apartment project containing 25% affordable units on a parcel of land containing 14.33 acres.

Mr. Zuker stated that he will open the hearing to take some public comments. The applicant has provided the Board with an extension through the end of August. The applicant has a new concept plan in which they have removed the townhouses and added additional units in some of the other buildings. The Zoning Board has not seen this new plan. Until we see this new plan, there is no use in commenting on it. The applicant has asked for a town department head meeting to go over different issues including neighborhood concerns. We will next meet on either August 20, 2014 or August 21, 2014 so we can hear the applicant's concept plan. The board asked for a 60 day extension, unfortunately we only received 30 days. The concept plan is just a concept. We need to see the actual plans. Unfortunately, we do not have more information, I wish we did. One of the benefits is that we are going to re-advertise. That way we can get the members that missed a prior hearing back on the case. The other members will be able to review all of the information. I would like to open this meeting up for any comments.

Ms. Coffey stated that she would be interested in hearing what had happened during the neighborhood meeting.

Mr. Foley wanted to know the timeline on when things will happen.

Mr. Zuker stated that there is a department head meeting on Wednesday and the applicant will be attending.

A resident stated that the applicant has done the same thing with the Sewer and Water board. The Zoning Board asked for 60 days so they could do a good job and the applicant denied it?

Mr. Zuker stated that the applicant said they would give the Board a 30 day extension and then an additional 30 day extension if needed.

The resident stated that this is their strategy to wear the Board out. This strategy has been used many other times. It drags us the residents and the Board to an extra meeting that has no value to anyone. Why wouldn't the Board deny the 30 day extension and send the applicant back to square one? That would force the applicant to come back with a better plan.

Mr. Zuker stated that under 40B law the Board can accept, deny or accept with conditions. What is unique is that the applicant went to the Housing Appeals Committee (HAC) for constructive approval. The Board's option would be to close the hearing and render a decision. Under 40B law, one of the worse things a town can do is reject it because then the applicant can go to the HAC and we as a town would not be able to add any conditions. It is beneficial for the Board to keep the case open. Otherwise, they will go back to the HAC and say that the Town of Walpole denied us and we want the HAC to override it. You are on point with the strategy of wearing everyone out. Whether or not that is what the applicant is doing, I don't know. We are here though.

The resident said that he appreciates the Board taking comments and then added the town does not have a water supply that will work. The town cannot supply water to all of the developments. Eventually the town will not be able to give water. This same thing happened in Stoughton. No construction could be done. Stoughton had to make deals with other towns to get water.

Ken Fettig of 234 Baker Street said that we have two 40Bs on Baker Street. There are some serious concerns about the amount of water that the town would have to supply to this project. We have asked Barberry to come and meet with us. They have not come to any meetings. They are ignoring the problem or trying to bypass it. I saw in some of the papers that they are requesting relief for some units.

Mr. Zuker said that he is attending the department head meeting and that he will ask these questions to get more information. They are all important points and these items do need to be addressed.

Laura Vaites of 12 Johnson Drive said in looking back over the Comprehensive Permit she did not come across a 21E permit. If the applicant is coming back with a new plan, she would like to see the report for the 21E. She mentioned that she would like to see what they came up with in terms of soil drainage.

Mr. Zuker stated that 21E is more of an environmental concern. He asked Ms. Vaites if she is looking for reports regarding soil testing.

Ms. Vaites said correct, who did it? What engineer? That would be something the neighbors could take to the Department of Environmental Protection (DEP) and show them that we have an aquifer.

Mr. Zuker asked if she was looking to review it. He mentioned that the Board could take a look in the files and see if they could find them. Mr. Zuker mentioned that he will bring this up at the department head meeting as well.

Dante Ferrara of 275 Moose Hill Road said that the Board had mentioned the neighborhood meeting earlier. He asked if the Board would like them to discuss the meeting from their point of view. He mentioned that they had filed with the DEP and that they have an appeal pending. They were notified by the DEP that the notice went to the Conservation Commission. The general premise was to have a settlement. The meeting was supposed to be a dialogue between the neighbors and Barberry.

Mr. Zuker asked if the meeting was just about the DEP case.

Mr. Ferrara stated yes that is what the meeting was for. The residents thought they would have it at someone's house. Town Counsel mentioned that the library would be available so they went there. The meeting was supposed to be between the neighbors and the applicant. The neighbors asked people to leave the meeting that were not a part of the neighborhood. The applicant set up a projector. The neighbors tried to stop them right in the beginning. The neighbors wanted to discuss the pending appeal with the DEP case. The applicant ignored them and went right along with their sales pitch. The applicant ran a slide show and acted as if they were trying to sell us a unit. They wasted our time and their own. We were offended. They did not want to listen to us. The applicant was showing us the buildings and amenities.

Mr. Zuker asked who was there from the applicant's side.

Mr. Ferrara said that there were five or six representatives including the CEO from the applicant's side.

Mr. Zuker wanted to know if the residents were able to ask any questions about the DEP case.

Mr. Ferrara stated they tried to discuss that with them but they did not want to hear it.

Mr. Zuker wanted to know if the applicant could get the message that the neighbors were frustrated.

Mr. Ferrara responded when the applicant was met with dead silence then yes he is sure they got a sense of that.

Ms. Vaite mentioned that Town Counsel reached out to one of the Moose Hill neighbors and asked them to have a heart to heart. It was recommended that it should be a private meeting. We did not want to disrespect anyone on the Zoning Board, Board of Selectmen or the press. The applicant did not discuss any settlement talks like they had planned. The neighbors had a very different impression going into this meeting as what it was going to be.

Mr. Zuker stated that he was hopeful that by August 20, 2014 they will get some of these questions, answered. There should be some changes. The Board has not actually seen anything though. The Board has no comment as of right now.

Scot Curran of 261 Moosehill Road wanted to know if the number of units has changed.

Mr. Zuker stated that it is a back and forth. Hopefully, the Board will see the new plan that shows the townhouses removed. There are still other issues. We will do our best job as a Board to balance the neighbors, the applicant and the 40B code. Hopefully, we can come up with something that will be beneficial to everyone. Just so everyone is clear on the process going forward. The applicant had given the ZBA a 30 day extension until the end of July. They just provided the ZBA with an additional extension for another 30 days to give us a concept plan. I do want the extension granted. As frustrating as this is, we will have another meeting. Hopefully on the 20th of August, they will be here with a concept plan. I am remaining hopeful that it will happen. That one night the applicant will be here.

Ms. Coffey mentioned to the neighbors that it is important for them to be at these meetings. It speaks volumes if more people are at the meeting. Her hope is that this will come to an end soon.

A resident wanted to know if the applicant does not give another extension on the 20th would the Board close it that day.

Mr. Zuker said that yes the Board would have to close it. He would hope that the applicant would come in so they can work together. However, if the applicant does not grant the board another extension then they would have to close it. It is very odd to handle business this way. It is just wasting time and delaying the process.

Helena Knight of 14 Orchard Drive asked if the applicant could just do the same thing they did tonight and only give the board a 30 day extension.

Mr. Zuker stated that as of right now the board has received another 30 days. The applicant could come back on August 20, 2014 and not give us another extension. From there, the Board

would close the hearing. Mr. Zuker hopes it will not come to that. He wants to put in some conditions and comments. He is hopeful that the applicant will give the Board a proper extension.

A motion was made by Mr. Zuker, seconded by Mr. Foley, that the Zoning Board of Appeals moves to accept the August 31, 2014 extension of the deadline to complete the public hearing regarding the application by Barberry Homes, LLC for a proposed 40B Project for land on Moose Hill Road as set forth in the July 21, 2014 extension letter provided by Barberry Homes, LLC's counsel, Attorney Bobrowski, to the ZBA; and to continue the public hearing session for the Project to August 20, 2014 at 7:00 p.m., with the public hearing for the project to be re-advertised and re-noticed at Barberry Homes, LLC's expense for that date and time.

The vote was **3-0-0 in favor**. (Zuker, Coffey, Foley voting)

There being no further business, a motion was made by Mr. Zuker, seconded by Mr. Foley, to adjourn the meeting at 8:20 p.m.

The vote was **3-0-0 in favor**. (Zuker, Coffey, Foley voting)

Craig W. Hiltz
Clerk

kb

Minutes were approved on October 29, 2014.